IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3190 of 1996

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHANLAL UKABHAI KUKADIA

Versus

COLLECTOR

Appearance:

MR RA MISHRA for Petitioner No. 1

MR HL JANI, AGP, for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 09/04/2004

ORAL JUDGEMENT

1. Leave to amend the cause title so as to mention the name of Junagadh Regional Oil Seeds Growers' Cooperative Union Limited as the petitioner.

2. The petitioner is a cooperative society

registered under the provisions of the Gujarat Cooperative Societies Act. The petitioner society is affiliated to Gujarat Regional Oil Seeds Growers' Cooperative Union, which is in turn one of the cooperative Unions sponsored by National Dairy Development Board (NDDB). The petitioner is engaged in helping the farmers and other cooperative societies in promotion and sales of oil seeds and edible oil.

3. The Civil Supplies Department, Junagadh, passed seizure order dated 20.1.1996 for six different alleged irregularities and seized 6454 kgs. of groundnut seeds, 7755 kgs. of groundnut oil, 5092 kgs of rape-seed refined oil and 5185 kgs. of expeller groundnut oil. Pursuant to the same a show-cause notice was issued on 31st January 1995, to which the petitioner has submitted reply on 10th February 1995. Thereafter the respondent no.1 passed an order dated 4th April 1995 and ordered to confiscate the goods ceased worth Rs.4,86,062/-.

4. Against the order dated 4th April 1995 the petitioner preferred Appeal No.240/95 before the respondent no.2, who partly allowed the appeal and ordered to confiscate 20% of the stock. Therefore, the present petition came to be filed challenging the order passed by the respondent no.2 in so far as it is against the petitioner.

5. Mr. Manoj Popat for Mr. R.A. Mishra submitted that the breaches alleged against the petitioner are of technical nature and therefore the authority has wrongly enforced confiscation inasmuch as the stock was shown either on the record of the petitioner or on the record of NDDB and that the petitioner being a cooperative society, it will not enter into any illegality as alleged by the respondents. Mr. Manoj Popat further submitted that the revisional authority has accepted the case of the petitioner that stock of NDDB is not shown on the stock of the petitioner and because of that there is a difference and the same stock is mentioned on the stock of NDDB.

6. Mr. Popat further submitted that in view of the fact that the alleged breaches are of technical nature, the confiscation order is illegal and bad in view of the language of section 6-A of the said Act, more particularly when the revisional authority has itself reduced the penalty from 100% to 20%. Mr. Popat has relied upon a decision of the Supreme Court in the case of N. Nagendra Rao & Co. Vs. State of A.P., reported AIR 1994 SC 2663. Para 5 of the said decision reads as

under:

"5. Prior to adjudicating upon the legal issues, it appears appropriate to examine in brief the objective of the Act, the provisions dealing with search, seizure and confiscation and the nature of their powers and manner of its exercise as it shall assist in determining if the statutory authorities are responsible for any loss or damage to the stocks and, if so, to what extent. The act was enacted in 1955 in the interest of the general public for the control of the production, supply and distribution of essential commodities and trade and commerce. In M/s Diwan Sugar & General Mills (Pvt.) Ltd. Vs. Union of India, AIR 1959 SC 626 : 1959(2) SCR 123, it was held that the prime object of the legislation was to secure availability of essential commodities to the general public at fair prices and to protect their interest by way of equitable distribution. "Essential Commodity" under Cl.(a) of S.2 of the Act means any of the commodities mentioned therein. It extends to such varied items as cattle fodder, coal, component parts and accessories of automobiles, cotton and woolen textiles, foodstuffs, iron and steel, paper, petroleum, raw cotton, jute and any other class of commodity notified by the appropriate Government. S.3 is the main provision directed towards securing equitable distribution of the essential commodity and its availability at fair prices. To achieve this objective, its various sub-sections confer powers on Government to issue orders regulating or even prohibiting production, supply and distribution of such goods. Cl.(j) of sub-sec.(2) of S. 3 empowers the Government to make any provision for any incidental or supplementary matter including in particular, the entry, search or examination of such premises, aircraft, vessels, vehicles, etc. to make seizure by a person authorised to make such entry, search or examination. But the power in respect of the articles has been made subject to reasonable belief that a contravention of the order has been, is being, or about to be committed. The breach of the sub-section is very wide as it empowers the person authorised to seize even if any contravention is about to be committed. The expression "reason to believe" has been interpreted by this Court to mean that even though formation of opinion may be

subjective but it must be based on material on the record. It cannot be arbitrary, capricious or whimsical. It is, thus, a check on exercise of power to seize the goods. The procedure after seizure is provided for by S.6A of the Act. Sub-se.(1) of it is extracted below:

"6A. Confiscation of essential commodity - (1) Where any essential commodity is seized in pursuance of an order made under S.3 in relation thereto, a report of such seizure shall, without unreasonable delay, be made to the Collector of the district or the Presidency Town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, the Collector may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied that there has been a contravention of the order may order confiscation of -

(a) the essential commodity so seized;

(b) any package, covering or receptacle in which such essential commodity is found, and

(c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity;

It requires a report of seizure of the essential commodity to be made without unreasonable delay to the Collector of the district who is empowered to direct confiscation if he is satisfied that there has been a contravention of the order. This requirement is to ensure that the higher authority shall apply its mind and take necessary steps in accordance with law. For instance, in this case, even non-essential goods were seized. If the Collector would have applied its mind and perused the report he would have immediately directed release of such goods instead of directing its sale by Tehsildar as the provision of the Act and the Control Orders do not apply to non-essential goods. The exercise of power was obviously mechanical. This is being mentioned only to demonstrate the nature of power and how it is expected to be exercised. Nothing turns on it so far as this appeal is concerned. But what

needs to be mentioned is that since the power is very wide as a person violating the Control Orders is to be visited with serious consequences leading not only to the confiscation of the seized goods, packages or vessel or vehicle in which such essential commodity is found or is conveyed or carried, but is liable to be prosecuted and penalised under S.7 of the Act, it is inherent in it that those who are entrusted with responsibility to implement it should act with reasonableness, fairness and to promote the purpose and objective of the Act. Further, it should not be lost sight of that the goods seized are liable to be confiscated only if the Collector is satisfied about violation of the Control Orders. The language of the section and its setting indicate that every contravention cannot entail confiscation. That is why the section uses the word "may". A trader indulging in black-marketing or selling adulterated goods, etc. should not, in absence of any violation, be treated at par with technical violations such as failure to put up the price list, etc., or even discrepancies in stock."

7. Mr. HL Jani for the respondents has submitted that the revisional authority has considered the case of the petitioner and has rightly imposed 20% penalty, which does not call for any interference. However, Mr. Jani could not assail the fact that the petitioner has not committed any illegality or black-marketing which warrants confiscation of goods.

8. From the record it is clear that the revisional authority has come to a conclusion that none of the irregularity is of a serious nature whereby it can be said that the petitioner has committed any illegality or black marketing. The further finding is that the petitioner Union being cooperatiave Union, it has no intention of committing any irregularity or illegality or holding any stock for black marketing. In spite of these findings the revisional authority has ordered to confiscate 20% of the stock, which, in my opinion, cannot be sustained. Moreover, in view of the observation of this Court in the case of Patel Ambaram Kuberbhai, reported in 1998(2) GLH 533, what is required to be seen is whether the petitioner has committed any malpractice or indulged into black marketing so as to call for order of confiscation. It is not the case of the authority that the petitioner has indulged into black-marketing or selling adulterated goods. In absence of such

allegations, the order of confiscation should have been quashed by the revisional authority.

9. In the result, the petition is allowed. The order dated 15th March 1996 passed by the respondent no.2, confiscating 20% of the stock of the petitioner is quashed and set aside. The bank guarantee furnished by the petitioner shall be released forthwith. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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